

7461

**DECISION**



*Shirley R. ...*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

**FILE:** B-190376

**DATE:** August 25, 1978

**MATTER OF:** Harry Levin - Claim for per diem at training center

**DIGEST:** Employee stationed in Washington, D. C. was authorized 3 days training at nearby Columbia, Maryland, in January 1977. He was authorized per diem instead of mileage for daily commuting because of adverse weather conditions. However, he used lodgings furnished by his agency only for such purposes as changing clothes and studying, and returned to his own residence to sleep. He is not entitled to per diem since such use of lodgings does not meet the statutory and regulatory requirements of necessity and reasonableness for per diem purposes.

This action results from a request dated October 5, 1977, by Mr. Harry Levin to review a demand by the Department of Housing and Urban Development (HUD) for repayment of certain per diem expenses paid to him or on his behalf incident to a temporary duty assignment.

Mr. Levin, a Realty Specialist with the Reconditioning and Contracting Division, HUD, Headquarters, Washington, D. C., was authorized to travel to an instructor's training course to be held at the HUD-East Training Center, Columbia, Maryland, from January 17 to 20, 1977. The travel order showed estimated travel costs of \$18.60, 40 miles per day for 3 days, plus \$48, 3 days per diem at \$16 per day. Mr. Levin usually commuted to the Center when he was scheduled for training but due to adverse weather conditions he was given the choice of staying at a room reserved by HUD at the Cross Keys Inn. Mr. Levin used the room for working and freshening up but chose to return to his residence at night to sleep. He submitted a voucher and was paid \$54.21, 3 days per diem plus mileage for one round trip from his residence to HUD-East.

Subsequently, HUD was advised that Mr. Levin had not stayed overnight at the Cross Keys Inn and billed him for \$71.11. That amount was computed on the basis of an overpayment of \$35.61 on his voucher (\$54.21 less round-trip mileage of \$18.60 for 3 days) plus \$35.50 paid by HUD to the Cross Keys Inn for 2 days. Apparently HUD did not request payment for the lodging expenses on the

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first day because Mr. Levin had checked into his room and did not decide not to stay until he ascertained later that the weather conditions permitted him to return home. Mr. Levin believes he is entitled to the payment he received since he checked in the motel with the intention of staying because of inclement weather and that, while he did not stay overnight in the room, he used it for such purposes as changing clothes and studying.

Section 5702 of title 5, United States Code, as amended by Public Law 94-22, May 19, 1975, provides that under regulations prescribed by the Administrator of General Services, employees traveling on official business inside the continental United States are entitled to a per diem allowance at a rate not to exceed \$35. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7). Paragraph 1-7.3c(1) of the FTR, as amended effective October 3, 1976, by FPMR Temp. Reg. A-11, Supp. 2, provides that when lodgings are required per diem shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of \$16 for meals and miscellaneous expenses. Paragraph 1-7.3c(1)(a), of the FTR, as amended effective May 19, 1975, requires that in computing per diem allowances there should be excluded from the computation the nights the employee spends at his residence or official duty station. More specifically, FTR para. 1-7.3c(2) (May 19, 1975) requires that the traveler actually incur expenses for lodging before allowing such a payment, and provides as follows:

"2. No minimum allowance is authorized for lodging since those allowances are based on actual lodging costs. Receipts for lodging costs may be required at the discretion of each agency; however, employees are required to certify on their vouchers that per diem claimed is based on the average cost for lodging within the continuous United States during the period covered by the voucher."

Paragraph 1-7.3a of the FTR provides that it is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Also, the Court of Claims defined the type of expenses covered by the per diem allowances as follows in Bornholt v. United States, 137 Ct. Cl. 134 (1956) at 136:

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"A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room in another city while still maintaining his own table and his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling."

Section 13(b) of HUD Notice 76-1, January 30, 1976, on Control of Official Travel which has been incorporated into the travel handbook, provides as follows:

"b. Local Commuting to HUD-East. In the interest of reducing travel costs, the administrative determination [that the use of facilities provided at the HUD Training Centers is essential to the successful completion of the training involved] set forth in 13 above will be waived by the Director of the HUD-East Training Center when it is feasible to do so for those employees whose official duty station is Washington, D. C. or Baltimore, Maryland and the employees elect to commute. These employees are encouraged to commute, particularly those in close proximity to the Center, whenever the nature of the specific training involved is such that it would not be detrimental to the successful completion of the training \* \* \*."

The above regulation is in accord with the FTR and Lornhoff, supra. Also, we have held in B-182728, February 18, 1975, that it is within the discretion of an agency not to authorize per diem when an employee voluntarily returns home each day.

The policy of HUD is to reduce travel costs by encouraging commuting by employees in Washington unless conditions are such that it would be seriously disruptive of the training sessions, as would be the case if there were adverse weather conditions preventing travel. It is difficult to reconcile this policy and the necessity and reasonableness requirements of the above-mentioned regulations with Mr. Levin's contention that his use of the room for changing clothes and studying yet driving back home to sleep constituted proper per diem expenses. Accordingly, since Mr. Levin did not use the room for lodging overnight to avoid commuting under adverse weather conditions, as authorized by his travel orders, and chose to commute daily, he is not entitled to any per diem payments.

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Finally, since no per diem was authorized in the event Mr. Levin chose to commute back to his residence, he should have advised the hotel of his change in plans and cancelled the reservation. In this connection, we held in B-181266, December 5, 1974, involving a reservation made on behalf of a single traveler by agency personnel, that the employee was responsible when the reservation was not used by him or cancelled in time.

Under these circumstances we see no basis for disturbing the administrative determination that per diem was not payable to Mr. Levin and that he is indebted to HUD in the amount of \$71.11.

*R. F. Kohn*  
Deputy Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*J. K. ...*  
*PH ...*

IN REPLY  
REFER TO: B-190376 (SK)

AUG 5 1978

The Honorable Newton I. Steers, Jr.  
House of Representatives

Dear Mr. Steers:

Further reference is made to your letter dated November 3, 1977, with enclosures, and subsequent correspondence regarding your constituent, Mr. Harry Levin, 1215 Burton Street, Silver Spring, Maryland 20910, who requested consideration of a demand by the Department of Housing and Urban Development (HUD) for repayment of certain per diem expenses paid to him incident to a temporary duty assignment at the HUD-East Training Center.

Enclosed is a copy of our decision of today, B-190376, wherein it was determined that per diem was not payable to Mr. Levin under the circumstances and he is required to make proper repayment to HUD for the claimed per diem and 2 nights lodging. We regret that we are unable to reach a determination more favorable to your constituent. The correspondence enclosed with your letter is returned as requested by you.

Sincerely yours,

N.F. JELLEN

Deputy Comptroller General  
of the United States

Enclosures



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*S. Khan*  
*PLAIN*

IN REPLY  
REFER TO: B-190376 (SK)

AUG 10 1978

The Honorable Paul S. Sarbanes  
United States Senator  
1516 G. H. Hall Federal Building  
31 Hopkins Plaza  
Baltimore, Maryland 21201

Dear Senator Sarbanes:

Further reference is made to your letter dated November 3, 1977, with enclosures, and subsequent correspondence regarding your constituent, Mr. Harry Levin, 1215 Burton Street, Silver Spring, Maryland 20910, who requested consideration of a demand by the Department of Housing and Urban Development (HUD) for repayment of certain per diem expenses paid to him incident to a temporary duty assignment at the HUD-East Training Center.

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Sincerely yours,

R.F. KELLER

Deputy Comptroller General  
of the United States

Enclosures